

Privy Council Appeal No. 114 of 1916.

Dal Singh - - - - - *Appellant,*
v.
The King Emperor - - - - - *Respondent,*

FROM

**THE COURT OF THE JUDICIAL COMMISSIONER, CENTRAL
PROVINCES, INDIA.**

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 8TH MARCH, 1917.

Present at the Hearing :

VISCOUNT HALDANE.
LORD ATKINSON.
LORD SHAW.
LORD PARMOOR.
MR. AMEER ALLI.

[*Delivered by* VISCOUNT HALDANE.]

In this case the appellant was convicted of murder by the Sessions Court of Jubbulpore, and was sentenced to death. The Court of the Judicial Commissioner of the Central Provinces heard an appeal and dismissed it, and confirmed the sentence under the provisions of the Indian Code of Criminal Procedure.

A petition for leave to appeal was presented to the King in Council. It was argued before this Board in support of the petition that the judgments in the Courts in India had been vitiated by an illegal and prejudicial use of the police diaries in the case, and that the credibility of the witnesses had been thereby wrongly estimated. What had taken place, it was alleged, had led to such a miscarriage of justice as to bring the conviction within the exceptional class of cases in which His Majesty in Council will review the proceedings in a criminal trial in India.

It is well settled that the unwritten principles of the Constitution of the Empire restrain the Judicial Committee from being used in general as a Court of Review in criminal cases. But while the Sovereign in Council does not interfere merely on the question whether the Court below has come

to a proper conclusion as to guilt or innocence, such interference ought to take place where there has been a disregard of the proper forms of legal process, grievous and not merely technical in character, or a violation of principle in such a fashion as amounts to a denial of justice. Their Lordships have now heard full arguments in the case before them, and have examined the procedure and evidence with some minuteness.

Before considering the result, it is right that they should state what they conceive to be, in a case such as that before them, the character of the limitation of their function. The Constitution of the Empire is tending to develop in the direction of regarding as final decisions given in the local administration of criminal justice. The general principle is established that the Sovereign in Council does not act, in the exercise of the prerogative right to review the course of justice in criminal cases, in the free fashion of a fully constituted Court of Criminal Appeal. The exercise of the prerogative takes place only where it is shown that injustice of a serious and substantial character has occurred. A mere mistake on the part of the Court below, as, for example, in the admission of improper evidence, will not suffice if it has not led to injustice of a grave character. Nor do the Judicial Committee advise interference merely because they themselves would have taken a different view of evidence admitted. Such questions are, as a general rule, treated as being for the final decision of the Courts below.

In the light of these observations, their Lordships turn to the circumstances in the present case. There is no doubt that, on the 23rd October, 1915, a woman named Kalia, who lived at Hardua, a village near Jubbulpore, was murdered by blows from some such weapon as an axe. The blows were of a deadly character, and one of them almost decapitated her. The prosecution alleged that the blows were delivered by the accused, Dal Singh. The defence was that they came from one Mohan, the husband of Kalia, who was said to have killed his wife in order to lay the foundation of a false charge against Dal Singh.

The case made for the prosecution was shortly as follows: That, on the morning of the murder, Dal Singh sent for Mohan, who was one of his tenants, and forced him to work at his (Dal Singh's) granary without payment; that, at the time of the midday meal Mohan went back to his own field, and when sent for by Dal Singh refused to return; that thereafter, about 4 P.M., the accused came to Mohan's field on horseback, accompanied by four servants, with the object of forcing Mohan to return to work; that an altercation then ensued, in the course of which the accused, who had an axe in his hand, attacked Mohan; that the latter climbed up his *marwa* (a platform raised on a framework of poles with bars across them) to escape from him, and while standing on one of the cross-bars was cut on the legs by the accused with the axe;

that Mohan shouted out, and his wife, Kalia, then sought to restrain the accused by clasping him round the waist, and was thereupon killed with axes by the accused and one Bhojraj, a servant of his; that as the accused was remounting his horse to go away, one Jhunni, a brother of Mohan, came up, having been attracted by the latter's cries, and hit the accused on the head with a stick, knocking off his cap and causing him to drop his axe; that the accused then rode away, accompanied by his servants.

The defence was that Dal Singh was not present when the murder was committed, and that Kalia was really killed by her husband, Mohan, for the purpose of getting up a false charge against Dal Singh. Kalia was said to have been blind, and it was contended that it was hardly possible that she could have been able to find and lay hold of Dal Singh in the manner suggested.

The charges laid by the police, and ultimately tried, were that Dal Singh and Bhojraj had rioted with deadly weapons, and had committed murder, and that Shanker, Dal Singh's servant, and Nanhe and Mithua, who were also his servants, and who were alleged to have accompanied him to Mohan's field, armed with *lathis*, or sticks, were guilty of rioting. At the trial Bhojraj and the other servants were acquitted, and comments were made by the Sessions Court Judge on the inconvenience of not being able to deal with the capital charge at a separate trial, in which there would have been greater freedom for the examination of the servants as witnesses. These, however, made statements at the trial which supported the defence set up by Dal Singh, the character of which was briefly as follows: He stated that on the day of the murder, about two in the afternoon, he was riding on his way from Hardua to Jubbulpore, accompanied by Shanker, who was on foot. When he reached a certain field Mohan and Jhunni, who were stated to have been hiding in the underbush, assaulted him with sticks. On being struck he went on to the station house at Patan, calling at Singhori on the way, where he got his relative, Himmat Singh, to accompany him to Patan. He stated that at the station he reported what had occurred to the native constable there, who took down what he said. The native sub-inspector in charge of the station, Harkishen, says that the report was taken down from Dal Singh's narrative in his (Harkishen's) presence, and was afterwards signed by Dal Singh. The latter had a wound on the head, for the treatment of which he was sent to the neighbouring hospital. Meantime there arrived at the station Jhunni, the brother of Mohan, and one Parbat, who stated in the box that he had been attracted to the scene of the murder by the shouting of Mohan, and had been requested to go with Jhunni to report to the police. Jhunni and Parbat reported the murder, and the officer in charge, after questioning them, sent for Dal Singh from the hospital and arrested him.

It is important to compare the story told by Dal Singh when making his statement at the trial with what he said in the report he made to the police in the document which he signed, a document which is sufficiently authenticated. The report is clearly admissible. It was in no sense a confession. As appears from its terms, it was rather in the nature of an information or charge laid against Mohan and Jhunni in respect of the assault alleged to have been made on Dal Singh on his way from Hardua to Jubbulpore. As such the statement is proper evidence against him. The statement is as follows :—

“To-day” (the day on which Kalia was murdered), “at 4 P.M., I went from Hardua, taking my servant, Shanker, son of Girdhari Khangar, with me, to the *kachhra* [field] of Nanha Mallah to call Mohan Mallah; because this morning he had been to work at my place, and, leaving the work before he had finished it, he had run away. His plough had been requisitioned for sowing purposes. I said to him, ‘Come to work.’ He replied, ‘I will not go.’ Thereupon I spoke to him harshly, for which Mohan struck me at once with a *lathi* on the right side of my head, and his brother, Jhunni, hit me once with a *lathi* on my back. Therefore I, becoming unconscious, fell from my horse. My servant, Shanker, cried out, and Maniram Kotwar and Bhojraj Lodhi came there. [Thereupon] these people ran away, and Shanker, Bhojraj [and] Maniram raised me and carried me home. And Jhunni and Mohan have beaten their *dukariya* [old woman] with *lathis*, and are making preparations to bring a false case against me. Possibly they are coming to make a report.”

It will be observed that this statement is at several points at complete variance with what Dal Singh afterwards stated in Court. The Sessions Judge regarded the document as discrediting his defence. He had to decide between the story for the prosecution and that told for Dal Singh. In considering his judgment, in which the evidence is examined fully, their Lordships do not propose to follow him in examining in that judgment the details he deals with. They have observed no material point in which he appears to have gone wrong. They are aware that the Sessions Judge tried the case with two native assessors who differed from his conclusion. But these assessors gave no reasons for so differing which their Lordships can consider adequate. The Sessions Judge had before him as witnesses whom he believed, Mohan and Jhunni, who testified to having been present when the murder took place and to the details of the account of it given for the prosecution. He also had before him a number of witnesses called for Dal Singh to establish his version of the events of the afternoon of the day on which Kalia lost her life. The Judge held that their testimony was untrustworthy because of serious discrepancies between the versions given by the various witnesses, and on other grounds. In the main he accepted the narrative given by Mohan and Jhunni, and, as he held, confirmed by the facts established. Their Lordships have scrutinised the evidence in order to see whether any miscarriage of justice of the exceptional kind already defined has taken place. So far from finding any such miscarriage in the proceedings at the trial, they see no reason for

differing from the conclusions come to by the presiding Judge, or from the reasons given by him in weighing the credibility of the witnesses. They have formed the same impression as he did of the probabilities of the two stories, as well as of the effect of the medical evidence. Had the decision been given solely on the testimony of the witnesses called at the trial and such documents as were plainly admissible, the proceedings would have given rise to no question of substance. The learned Judge who tried the case gave his judgment to so large an extent on proper materials that, even if, here and there, he alludes to documents which were not properly in evidence, he has in no case done so in such a fashion as to imperil the conclusion at which he arrived, tested by the standard of substantial justice.

But in the Court of Appeal further material was brought under consideration, and it is in this connection that more difficult questions have been raised. The Court of Appeal might, in their Lordships' opinion, have properly dismissed the appeal on the simple ground that an examination of the evidence on the record disclosed no reason to differ from the finding of the Judge who tried the case. But they were not content to confine themselves to this safe ground, for, although they expressed substantial agreement with the reasons he gave, they went on to take into consideration the police diary made during the preparation of the case and antecedently to the trial. The question which has now to be considered is whether the appearance of this feature in the judgment of the Court of Appeal vitiates the judgment and confirmation required by the Criminal Procedure Code.

Under Section 172 of the Code every police officer making an investigation is to enter his proceedings in a diary, and any Criminal Court may send for the police diaries of a case under enquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such enquiry or trial. Such a diary was kept in the present case, and the Judge who tried it had the diary before him. Under Part VII of the Code an appeal is permitted, subject to certain restrictions, and an appeal was brought to the Court of the Judicial Commissioner in the present case, and was heard by two Judges. By Section 374, when the Court of Session passes sentence of death the proceedings are to be submitted to the High Court (in this instance the Court of the Judicial Commissioner), and the sentence is not to be executed unless it is confirmed by the High Court. On the 19th April, 1916, the sentence on Dal Singh was confirmed by the Court of the Judicial Commissioner "for the reasons given in our judgment of this date" on the appeal.

Had the Court of Appeal simply taken the same course as the Sessions Judge and affirmed his judgment on the evidence on the record, it is evident that the conviction would not have been reviewed by this Board. For, as their Lordships have

already stated, there was adequate and proper evidence upon which that Judge could and did convict. The Judges in the Court of Appeal considered this evidence, and did not differ on any material point from the view he took of it. But, apparently with the view of making their opinion still more conclusive, they went on, after examining the evidence of the witnesses and testing the credibility of those called for the defence by referring to the discrepancies in the testimony of the witnesses on which the trial Judge had properly dwelt, to test that testimony still further by reading the earlier statements of these witnesses made to the police and entered in the police diary. In other words, they treated what was thus entered as evidence which could be used at all events for the purpose of discrediting these witnesses. In their Lordships' opinion, this was plainly wrong. It was inconsistent with the provisions of Section 172 of the Criminal Code. To use the diary for the purpose they did was to contravene the rule laid down in *Queen-Empress v Mannu* (I.L.R. 19, Allahabad 390), where a full Court pointed out that such a diary may be used to assist the Court which tries the case by suggesting means of further elucidating points which need clearing up, and which are material for the purpose of doing justice between the Crown and the accused, but not as containing entries which can by themselves be taken to be evidence of any date, fact, or statement contained in the diary. The police officer who made the entry may be confronted with it, but not any other witness.

The question which arises is, therefore, whether the improper use made of the entries by the Court of Appeal is a sufficient reason why the Judicial Committee should recommend interference with the judgment and sentence. In their Lordships' opinion, it is not such a reason. They have already stated that they have no ground for doubting that the trial Judge properly convicted and sentenced Dal Singh. He then had an appeal heard by the proper Court, and the sentence was confirmed by that Court. The conditions of the Code as to jurisdiction have thus been complied with. The Court of Appeal had before it evidence on which it placed reliance, and on which it could properly have based its affirmance and confirmation of the conviction. It plainly went wrong in using the diary. Now it is true that error in procedure may be of a character so grave as to warrant the interference of the Sovereign. Such error may, for example, deprive a man of a constitutional or statutory right to be tried by a jury, or by some particular tribunal. Or it may have been carried to such an extent as to cause the outcome of the proceedings to be contrary to fundamental principles which justice requires to be observed. Even if their Lordships thought the accused guilty, they would not hesitate to recommend the exercise of the prerogative, were such the case. But where the error consists only in the fact that evidence has been improperly admitted,

which was not essential to a result which might have been come to wholly independently of it, the case is different. The dominant question is the broad one whether substantial justice has been done, and, if substantial justice has been done, it is contrary to the general practice to advise the Sovereign to interfere with the result. The point in the present appeal is therefore whether, looking at the proceedings as a whole, and taking into account what has properly been proved, the conclusion come to has been a just one.

In the result their Lordships will therefore humbly advise His Majesty that the appeal should be dismissed. There will, as hitherto has been usual in such cases, be no order as to costs.

In the Privy Council.

DAL SINGH

a.

THE KING EMPEROR.

DELIVERED BY VISCOUNT HALDANE.